KERAJAAN NEGERI KELANTAN v. PETROLIAM NASIONAL BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
ABDUL AZIZ ABDUL RAHIM JCA
UMI KALTHUM ABDUL MAJID JCA
BADARIAH SAHAMID JCA
[CIVIL APPEAL NO: W-01(NCVC)(W)-145-05-2015]
19 OCTOBER 2018

CIVIL PROCEDURE: *Proceedings – Questions and issues of law – Applications under O. 14A Rules of the High Court 1980 allowed by High Court and affirmed by Court of Appeal and Federal Court – High Court ordered parties to formulate set of agreed facts and questions of law to be determined by court – Plaintiff prepared proposed questions and issues of law comprising 14 questions and issues – Whether plaintiff in position of introducing or adding further questions and/or issues of law – Whether plaintiff's suit ought to be determined solely on questions and issues of law framed by defendants – Whether plaintiff ought to be precluded from advancing own proposed questions of law to be determined by court*

CIVIL PROCEDURE: *Appeal – Ruling – Whether 'decision' under s. 3 of Courts of Judicature Act 1964 appealable*

The appellant ('plaintiff') filed a civil suit against the respondents ('defendants'). The defendants proceeded to file for applications under O. 14A of the Rules of the High Court 1980 and brought forward six issues of law to be determined by the court. The High Court allowed the defendants' O. 14A applications. Appeals to the Court of Appeal and the Federal Court proved futile. It was decided that the plaintiff's suit would be determined by way of an O. 14A proceeding. During a case management at the High Court, the plaintiff submitted that, apart from the six questions of law formulated by the defendants, there were other questions of law that needed to be determined by the High Court. The High Court Judge ('the HCJ') ordered the parties to formulate a set of agreed facts and the questions of law to be determined by the court. The plaintiff then prepared proposed questions and issues of law comprising a total of 14 questions and issues. The defendants argued that (i) the plaintiff was not in the position of introducing or adding further questions and/or issues of law; and (ii) the plaintiff's suit ought to be determined solely on the questions and issues of law framed by the defendants, as they had been approved and endorsed by the Court of Appeal and the Federal Court. The HCJ ruled in favour of the defendants and disallowed the addition of the 14 questions and issues by the plaintiff. Referring to the Federal Court decision in dismissing the plaintiff's appeal, the HCJ opined that the issues had been ventilated and considered by the

A Federal Court. Hence, the present appeal. The issues that arose for adjudication were (i) whether an appeal is a decision under s. 3 of the Courts of Judicature Act 1964 ('the CJA'); and (ii) whether the plaintiff ought to be precluded from advancing its own proposed questions of law to be determined by the court.

B **Held (allowing appeal)**
Per Umi Kalthum Abdul Majid JCA delivering the judgment of the court:

(1) Under s. 67 of the CJA, the 'ruling' of the High Court was appealable. The plaintiff had the right to appeal on the ruling made by the HCJ because the outcome of this ruling had a serious impact on the plaintiff's
C case at the High Court as some of the issues pleaded in the plaintiff's statement of claim might not have been ventilated in its entirety. In this context, the 'ruling' by the HCJ had finally disposed of the rights of the plaintiff, if any, to that extent and had seen it fit to write her grounds of judgment for her 'ruling'. (para 21)

D **(2)** In the interest of justice and fair play, it was only appropriate for the plaintiff to be allowed to submit its own questions of law to the High Court and it would be for the High Court to exercise its discretion as to whether any of the additional questions were appropriate for a
E determination under O. 14A proceedings. The denial of the plaintiff of this opportunity would be wholly unacceptable and against the basic principle of justice and fairness in a civil trial. The plaintiff would be denied its right to be heard on its claim in its entirety and to address its grievances wholly before the High Court. The fact that the plaintiff's claim would be determined by way of the O. 14A proceeding must not
F negate or reduce the plaintiff's right to have its case properly ventilated before the High Court. (para 24)

(3) Nowhere in the decision of the Federal Court was the plaintiff precluded, nor prohibited, from formulating its own questions of law for
G the determination under the O. 14A proceeding. The crux of the decision of the Federal Court was only in respect of the objection made by the plaintiff as to the appropriateness of the mode of disposal of the matter in dispute, that was, whether it should be by way of O. 14A application or by way of a full trial by the calling of witnesses. The HCJ felt that she was bound by the decision of the Federal Court, not only
H in regard to the mode of disposal of the suit but also in regard to the questions of law formulated by the defendants. Therefore, the HCJ failed to exercise her discretion despite the fact that she had, earlier on, during case management stage, directed parties to formulate a set of questions of law to be determined by the court. (para 26)

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(4) The matter was remitted back to the High Court for the plaintiff to put to the High Court the 14 questions proposed for determination by the HCJ on whether all or any of the 14 questions were appropriate for determination under the O. 14A proceedings, together and in addition to, the questions already posited by the defendants. In determining the appropriateness of the question for determination, the High Court may give appropriate direction to the parties. (para 27)

Bahasa Malaysia *Headnotes*

Perayu ('plaintif') telah memfailkan satu guaman sivil terhadap responden-responden ('defendan-defendan'). Defendan-defendan seterusnya memfailkan permohonan-permohonan bawah A. 14A Kaedah-Kaedah Mahkamah Tinggi 1980 dan mengemukakan enam isu undang-undang untuk diputuskan oleh mahkamah. Mahkamah Tinggi membenarkan permohonan A. 14A defendan-defendan. Rayuan ke Mahkamah Rayuan dan Mahkamah Persekutuan tidak berjaya. Diputuskan bahawa guaman plaintif akan diputuskan melalui prosiding A. 14A. Semasa pengurusan kes di Mahkamah Tinggi, plaintif mengemukakan bahawa, selain enam soalan undang-undang yang dirangka oleh defendan-defendan, terdapat lain-lain soalan undang-undang lagi yang perlu diputuskan oleh Mahkamah Tinggi. Hakim Mahkamah Tinggi ('HMT') memerintahkan pihak-pihak merangka satu set fakta dan soalan undang-undang yang disetujui, untuk diputuskan oleh mahkamah. Plaintif kemudian menyediakan soalan-soalan dan isu-isu undang-undang yang mengandungi 14 soalan dan isu. Defendan-defendan mendalihkan bahawa (i) plaintif bukan dalam kedudukan memperkenalkan atau menambah soalan dan/atau isu lanjut bawah undang-undang; dan (ii) guaman plaintif sepatutnya diputuskan hanya berdasarkan undang-undang dan isu-isu undang-undang yang dirangka oleh defendan-defendan kerana kesemuanya telah dibenarkan dan diendors oleh Mahkamah Rayuan dan Mahkamah Persekutuan. Hakim Mahkamah Tinggi memutuskan berpihak pada defendan-defendan dan tidak membenarkan tambahan 14 soalan dan isu oleh plaintif. Merujuk keputusan Mahkamah Persekutuan dalam menolak rayuan plaintif, HMT berpendapat bahawa isu-isu telah disuarakan dan dipertimbangkan oleh Mahkamah Persekutuan. Maka timbul rayuan ini. Isu-isu yang timbul untuk diputuskan adalah (i) sama ada rayuan ialah satu keputusan bawah s. 3 Akta Mahkamah Kehakiman 1964 ('AMK'); dan (ii) sama ada plaintif harus dihalang daripada mengemukakan soalan-soalan undang-undang yang dicadangkan untuk diputuskan oleh mahkamah.

Diputuskan (membenarkan rayuan)
Oleh Umi Kalthum Abdul Majid HMR menyampaikan penghakiman mahkamah:

(1) Bawah s. 67 AMK, 'ketetapan' mahkamah boleh dirayu. Plaintif mempunyai hak merayu terhadap ketetapan yang dibuat oleh HMT kerana keputusan ketetapan ini mempunyai impak serius pada kes plaintif kerana beberapa isu yang diplidkan dalam pernyataan tuntutan plaintif mungkin tidak disuarakan sepenuhnya. Dalam konteks ini, 'ketetapan' oleh HMT telah, akhirnya, melupuskan hak-hak plaintif, jika ada, hingga tahap ini dan berpendapat adalah sesuai untuk beliau menulis alasan penghakiman 'ketetapan' beliau.

(2) Demi kepentingan keadilan dan kesaksamaan, adalah sesuai untuk plaintif dibenarkan mengemukakan soalan-soalan undang-undangnya kepada Mahkamah Tinggi dan adalah untuk Mahkamah Tinggi menjalankan budi bicaranya tentang sama ada terdapat mana-mana soalan tambahan yang sesuai untuk diputuskan bawah prosiding A. 14A. Penafian plaintif akan peluang ini langsung tidak boleh diterima dan terhadap prinsip asas keadilan dan kesaksamaan dalam perbicaraan sivil. Plaintif akan dinafikan hak agar keseluruhan tuntutannya didengar dan mengemukakan kilanan sepenuhnya di Mahkamah Tinggi. Fakta bahawa tuntutan plaintif akan diputuskan melalui prosiding A. 14A tidak harus menidakkan atau mengurangkan hak plaintif agar kesnya disuarakan di Mahkamah Tinggi.

(3) Tiada mana-mana dalam keputusan Mahkamah Persekutuan bahawa plaintif dihalang, atau dilarang, merangka soalan-soalan undang-undang untuk diputuskan bawah prosiding A. 14A. Perkara pokok keputusan Mahkamah Persekutuan hanyalah berkaitan bantahan yang dibuat oleh plaintif tentang kesesuaian cara pelupusan hal perkara yang dipertikaikan dengan memanggil saksi-saksi. Hakim Mahkamah Tinggi berpendapat beliau terikat dengan keputusan Mahkamah Persekutuan, bukan hanya berkaitan cara pelupusan guaman tersebut sahaja tetapi juga berkaitan soalan-soalan undang-undang yang dirangka oleh defendan-defendan. Oleh itu, HMT gagal menjalankan budi bicara beliau walaupun, awalnya, semasa peringkat pengurusan kes, beliau mengarahkan pihak-pihak merangka satu set soalan undang-undang untuk diputuskan oleh mahkamah.

(4) Hal perkara ini dikembalikan kepada Mahkamah Tinggi untuk plaintif kemukakan 14 soalan yang dicadangkan kepada Mahkamah Tinggi untuk diputuskan oleh HMT sama ada semua atau mana-mana 14 soalan tersebut yang sesuai untuk diputuskan bawah prosiding A. 14A, bersama-sama dan sebagai tambahan, soalan-soalan yang dikemukakan

oleh defendan-defendan. Dalam memutuskan kesesuaian soalan-soalan untuk pemutusan, Mahkamah Tinggi boleh memberi arahan yang sesuai kepada pihak-pihak.

Case(s) referred to:

*Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals [2014] 7 CLJ 597 FC **(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 67
Federal Constitution, arts. 8, 13
Rules of the High Court 1980, O. 14A

For the appellant - Tommy Thomas, Takiyuddin Hassan, Sitpah Selvaratnam, Rahayu Mumazaini; M/s Tommy Thomas
For the 1st respondent - Cecil WM Abraham & Rishwant Singh; M/s Cecil Abraham & Partners
For the 2nd respondent - Suzanna Atan, SFC

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: 21NCVC-21-2011 (overruled).]

Reported by Najib Tamby

JUDGMENT

Umi Kalthum Abdul Majid JCA:

Introduction

[1] This was an appeal by the Kelantan State Government against the decision of the learned High Court Judge delivered on 10 April 2015 in rejecting the 14 issues submitted by the Kelantan State Government for a proceeding under O. 14A of the Rules of the High Court 1980 (RHC).

[2] For the purpose of this appeal, the parties will be referred to as they were in the High Court.

Background Facts Of The Case

[3] The Kelantan State Government (the "plaintiff") filed a civil suit against Petroliam Nasional Berhad (the "first defendant") *vide* writ of summons and statement of claim dated 30 August 2010.

[4] The Federal Government of Malaysia ("the second defendant") was brought in later as a party to this suit.

[5] The first defendant had on 30 March 2011 filed a summons in chambers in encl. 16 for an application under O. 14A of the RHC and on 21 April 2011 the second defendant filed another summons in chambers for an application under O. 14A of the same.

[6] The first defendant formulated six issues of law to be determined and the second defendant had formulated three issues of law to be determined by the High Court. The three issues formulated by the second defendant were identical with the first three issues formulated by the first defendant. Thus, in essence, the defendants had put forward six issues of law to be determined by the court.

[7] It is pertinent to note that from the very beginning, the plaintiff took the stand that this civil suit is complex and this was evident from the particulars pleaded in the plaintiff's statement of claim and the substantial replies to the defences which pleaded several causes of action including "breach of statutory contracts", unfair discrimination, estoppel and violation of arts. 8 and 13 of the Federal Constitution.

[8] The High Court then allowed both of the defendants' O. 14A applications on 18 January 2012. The matter went up for appeal before the Court of Appeal and the appeal was dismissed on 26 April 2012. The plaintiff further appealed to the Federal Court, upon leave being granted, and the Federal Court dismissed the plaintiff's appeal. At this stage, it was decided that the plaintiff's suit shall be determined by way of an O. 14A proceeding.

[9] On 19 September 2014, during a case management at the High Court, the plaintiff informed the court that it was of the view that there are other questions of law that needed to be determined by the High Court, apart from the six questions of law formulated by the defendants. As such, the learned High Court Judge directed the parties to formulate a set of agreed facts and the questions of law to be determined by the court.

[10] The counsel for the plaintiff then prepared a "Proposed Questions and Issues of Law" comprising of a total of 14 questions and issues.

[11] The learned counsel for the defendants took a common view that the plaintiff's suit ought to be determined solely on the questions and issues of law as framed by the defendants. This contention was premised on the fact that these questions and issues of law had been approved and endorsed by the Court of Appeal and the Federal Court. Thus, the defendants were of the view that the plaintiff was not in the position to either introduce or add further questions and/or issues of law.

[12] The learned High Court Judge had, on 10 April 2015, ruled that the hearing of the plaintiff's claim against the defendants shall be determined based on the questions and issues of law as framed by the defendants and disallowed the addition of the 14 questions and issues by the plaintiff.

At The High Court

[13] In coming to the decision to proceed with the hearing of the O. 14A applications with questions and issues of law formulated by the defendants, the learned High Court Judge had made a reference to the Federal Court decision where the Federal Court dismissed the plaintiff's appeal (see *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals* [2014] 7 CLJ 597; [2014] 6 MLJ 31).

[14] The learned High Court Judge stated that the Federal Court decision was quite clear in that it agreed that the core issue in this case is whether the plaintiff has any rights over the petroleum won and saved in the continental shelf off its coast and that this issue can be determined based on the questions and issues of law framed by the defendants.

[15] The learned High Court Judge was also of the view that it was no longer open for the plaintiff to either introduce and/or to add additional questions or issues of law when the Federal Court had ruled that the questions and issues of law framed by the defendants had passed the threshold under O. 14A of the RHC.

[16] The learned High Court Judge was of the view that these issues had been ventilated and considered by the Federal Court and the plaintiff was not prejudiced by the said decision.

[17] The plaintiff, after having maintained its position from the outset that the matter should not have been resolved by way of an O. 14A application due to the complexities of the issues involved, the court held that it must now adhere to the decision of the Federal Court. The plaintiff now finds itself in a position where it is prohibited from adding and/or formulating its own questions and issues of law to the O. 14A proceeding.

[18] The plaintiff vehemently opposed the contention that the civil suit ought to be determined solely and exclusively on the issues formulated by the defendants.

[19] The plaintiff argued that by doing so, it would be against the fundamental spirit and the basic tenet of justice and fairness in civil trial. The plaintiff argued that its right to be heard on its own claim and to address its grievances before the court would be denied. The plaintiff is entitled to have all the issues pleaded in its statement of claim and the statement in reply to be ventilated before the court. The plaintiff's right to put forward all the evidence and to advance all arguments must not be denied. By not allowing the plaintiff to formulate and/or to add its own questions would prejudice the plaintiff.

The Appeal

Whether Appeal Is Not A Decision Under s. 3 Of The Courts Of Judicature Act 1964

[20] Section 3 of the Courts of Judicature Act 1964 (CJA) provides that:

> **Interpretation**
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> 3. In this Act, unless the context otherwise requires:
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> ...
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> "decision" means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties; ...

Meanwhile, s. 67 of the CJA further provides that:

> Appellate Jurisdiction – Civil Appeals
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> **Jurisdiction to hear and determine civil appeals**
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> 67 (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.
>
> (2) The Court of Appeal shall have all the powers conferred by section 24A on the High Court under the provisions relating to references under order of the High Court.

[21] We disagreed with the contention of the learned counsel for the first defendant that there was no "decision" made by the learned High Court Judge. The first defendant had submitted that there was no competent appeal before this court as the learned High Court Judge had only made a "ruling", not a decision. We disagreed with this submission as we were of the view that under s. 67 of the CJA, the ruling of the High Court Judge is appealable. The plaintiff has the right to appeal on this particular ruling made by the learned High Court Judge because the outcome of this ruling has a serious impact on the plaintiff's case at the High Court as some of the issues pleaded in the plaintiff's statement of claim may not have been ventilated in its entirety. In this context, we found the "ruling" by the learned High Court Judge had "finally" disposed of the rights of the plaintiff, if any, to that extent and had seen it fit to write her grounds of judgment for her "ruling".

Whether The Plaintiff Ought To Be Precluded From Advancing Its Own Proposed Questions Of Law To Be Determined By The Court

[22] The first defendant also contended that the plaintiff, by opposing the O. 14A applications must now abide by its election and cannot now argue before the High Court that it is unfair and unjust for the plaintiff to be subjected to the proposed questions of law put forth by the defendants and

as affirmed by the Federal Court only. The first defendant further submitted that no further issues are admissible at this stage since the order of the Federal Court is final and binding.

[23] The second defendant submitted that it is not open for the plaintiff to frame new questions of law for the High Court's consideration as the relevant questions had already been determined by the learned High Court Judge much earlier (on 18 January 2012). On appeal to the Court of Appeal and the Federal Court, the Federal Court had affirmed those questions of law allowed by the learned High Court Judge to be the questions of law to determine this action.

[24] Having considered the submissions of the counsel for the defendants on this issue, we were of the view that the plaintiff is entitled to propose its own questions of law in addition to the defendants'. We were of the view that in the interest of justice and fair play, it is only appropriate for the plaintiff to be allowed to submit its own questions of law to the High Court and then it would be for the High Court to exercise its discretion whether or not any of the additional questions are appropriate for a determination under O. 14A proceedings. The denial of the plaintiff of this opportunity would, in our view, be wholly unacceptable and against the basic principle of justice and fairness in a civil trial. The plaintiff would be denied its right to be heard on its claim in its entirety and to address its grievances wholly before the High Court. The fact that the plaintiff's claim will be determined *vide* O. 14A proceeding must not negate nor reduce the plaintiff's right to have its case properly ventilated before the High Court.

[25] It is also pertinent to note that the plaintiff had all along strongly objected to the applications by the defendants for this action to be determined *vide* O. 14A proceeding. As such, and in line with its objection, it would be inconsistent for the plaintiff to at the same time propose its own questions of law then. Only when it was conclusively determined that the civil suit will be disposed of by way of O. 14A, is plaintiff left with no choice but to put forward its own questions of law for consideration of the High Court. Thus, we were of the view that the plaintiff ought not to be precluded from proposing its questions of law now just because at the earlier stage it was merely exercising its right to object to the applications made by the defendants.

[26] We were also of the view that nowhere in the decision of the Federal Court is the plaintiff precluded nor prohibited from formulating its own questions of law for the determination under O. 14A proceeding. In our view, the crux of the decision of the Federal Court was only in respect of the objection made by the plaintiff as to the appropriateness of the mode of

A disposal of the matter in dispute, that is, whether it should be by way of O. 14A application or by way of a full trial by the calling of witnesses. The decision of the Federal Court was, insofar as this appeal was concerned, on the appropriate mode of disposing of the matter and only took into account the formulation of the questions of law that are to be used for the hearing of
B O. 14A application to that end. We noted that the learned High Court Judge felt that she was bound by the decision of the Federal Court not only in regard to the mode of disposal of the suit but also in regard to the questions of law formulated by the defendants; she therefore had failed to exercise her discretion despite the fact that she had earlier on in the case management
C stage directed parties to formulate a set of questions of law to be determined by the court.

Conclusion

[27] Based on the aforesaid reasons, we unanimously allowed the appeal and ordered as follows:

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(i) the matter shall be remitted back to the High Court for the plaintiff to put to the High Court the 14 questions proposed for determination by the learned High Court Judge on whether all or any of the 14 questions are appropriate for determination under O. 14A proceeding together and in addition to, the nine questions already posited by the defendants;

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(ii) in determining the appropriateness of the question for determination, the High Court may give appropriate direction to the parties; and

(iii) the costs shall be in the cause.

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